No. 17010

I. the United States Court of Appeals for the Ninth Circuit

ATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

.L 208, INTERNATIONAL BROTHERHOOD OF TEAM-STERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA; AND LOCAL 123, FURNITURE WORKERS, UPHOLSTERERS & WOODWORKERS UNION, RESPONDENTS

N PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

RIEF FOR THE NATIONAL LABOR RELATIONS BOARD

STUART ROTHMAN,
General Counsel,
DOMINICK L. MANOLI,
Associate General Counsel,
MARCEL MALLET-PREVOST,
Assistant General Counsel,
MELVIN J. WELLES,
WILLIAM J. AVRUTIS,
Attorneys,
National Labor Relations Board.

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v.

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ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case is before the Court upon the petition of the National Labor Relations Board pursuant to Section 10(e) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Sec. 151, et seq.),[1] for enforcement of its order (R. 48–50, 54–55) [2] issued against respondents on November 7, 1959, and reported in 125 NLRB No. 20. This Court has jurisdiction of these proceedings under Sec-

[1] The relevant statutory provisions are reprinted *infra*, pp. 8–11.

[2] References to the printed record are designated "R." References preceding a semicolon are to the Board's findings; those following the semicolon are to the supporting evidence.

tion 10(e) of the Act, the unfair labor practices h ing occurred within this judicial circuit, at Los An les, California, where the employer, Sierra Furniture om- pany, is engaged in the manufacture of furniture (4; 58–60).

STATEMENT OF THE CASE

The Board found that the respondent Locals, hile representing less than a majority of the empl ees, picketed the premises of the employer, Sierra F ni- ture Company, in an attempt to coerce it into ex ut- ing a union-shop contract. The Board concluded hat the Locals thereby violated Section 8(b)(2) o the Act. It based its conclusion upon evidentiary cts which may be summarized as follows:

I. The Board's Findings of Fact

A. Transactions between respondents and the Company before the nfair labor practice occurred

1. *Local 208 gets a union-shop contract from the employer at a tim hen it is a minority representative*

In July 1958, Local 123 began to organize the om- pany's employees at its plant in Los Angeles, ali- fornia (R. 36, 5; 115–116, 121–122). On July 1 the Local, through its business agent, Gus O. B wn, wrote the Company claiming that Local 123 r re- sented a majority of Sierra's employees and a ing for recognition and a contract (R. 5; 185). O the same or next day Brown spoke by telephone to ier- ra's president, to the same effect (R. 15; 23). Actually, Local 123 represented only 28 of t 60 company employees employed at the time. (R. 2 13; 187–204). Brown was referred to Attorney eld- man to whom Brown repeated his demand (R 15;

24) The requested recognition was not immediate-
granted and on July 21 Brown again phoned
eldman. As of July 21, 33 workers, a majority of
e mployees, had for the first time signed cards
esignating Local 123 (R. 36, 5, 13, 17; 83–84, 116–
17, 128–130, 187–204). No cards had been signed
or Local 208 (R. 39; 146, 81–82, 127). However,
Brown, as he related at the hearing, told Feldman
that we were making the demand on behalf of the
ocal 123 and Local 208 jointly, a demand for recog-
nition of the employees of Sierra, and I asked him
whether he had contacted the company and whether
e was ready to deal with us" (R. 15; 126). Com-
pany Counsel replied that, "the company doesn't
want to recognize or deal with you" (R. 15; 126–127).

On the next day, July 22, Brown wrote Feldman
confirming Brown's telephone statement of the day
before "wherein I advised you that we have revised
our request for recognition to Sierra in that * * *
Local 208 and our Local are jointly requesting recog-
nition on behalf of [the employees]" (R.
6; 185–186).

Also on July 22, the two Locals called a strike and
began picketing the Company plant together (R. 36,
5, 16; 81–82, 127). However, less than a majority of
the employees joined the strike (R. 5, 24; 83–84, 128).
The Company filed a representation petition with the
Board on the same day (R. 36, 5, 18). On July 31,
Local 123 advised Sierra that it "disclaims any and
all interest in representing the employees" (R. 36, 5;
8). Local 208 then wrote to claim recognition alone
(R. 36–37, 5; 205). On August 6, Sierra signed a

union-shop contract with Local 208 and the picketing stopped (R. 36, 5; 82, 135–136, 181).

2. The employer disavows the contract and withdraws recognition of Local 208

On August 25, a Sierra employee filed charges against Sierra and Local 208 alleging that the Company had entered into a union-shop contract with Local 208 at a time when that union represented less than a majority of its employees (R. 37, 6; 105–1). By letter dated September 3, the employer notified Local 208 that investigation of the charge by Board agents disclosed that the Union did not represent a majority of its employees and that in view of the illegality of the arrangement, "the agreement of August 6, 1958, is completely invalidated" (R. 37, 6; 1). Also by letter of September 3rd, Local 123 notified Sierra that it was withdrawing its earlier disclaimer of interest (R. 37, 6; 206).[3]

B. The unfair labor practice

1. The employer does not meet with Local 208 for purposes of negotiations as demanded and both Locals commence picketing the Company's premises

On September 22, Local 208 wrote the Company demanding that it meet with that Local by September 23 in order to determine the Company's position with regard to the August 6 contract, which it "insisted" was "wholly valid and enforcible, to the end that full compliance therewith may be had," and "to negotiate another and different bargaining agreement if such

[3] The Board's decision based upon the charge referred to is reported in 123 NLRB 1198. Therein the Board found that Local 208 neither alone or together with Local 123 represented a majority of Sierra's employees on August 6, 1958, when recognition was extended and the contract signed (R. 36).

be ecessary and desirable in the premises" (R. 37, 7; 179. The Local added in its letter that if such meeting and any "necessary bargaining" did not duly take place it would "resort to economic sanctions" (*ibid.*).

Company counsel was unavailable and Sierra, in consequence, did not meet the deadline. Locals 123 and 208 jointly began picketing the company plant promptly on September 24 (R. 37, 8; 64, 66). Their picket signs declared Sierra to be unfair to organized labor and bore the names of both Locals (R. 8; 66).[4] Sierra's working force had now increased from 60 employed July 21 to 79 employees (R. 38; 66–67, 77, 179). The Locals, whether taken separately or together, did not represent a majority of the latter number (R. 38; 85, 77, 87–88).

Representatives of the Company and the two Locals first met on September 25, 1958. The Locals pressed for a resumption of contractual relationships but this time with both Locals (R. 37, 26, 27; 68, 86–87, 88–89, 94–95). The Company then suggested that an election be held, to determine the question of representation, but the Locals rejected this (R. 37, 46, 8; 68, 78–79, 88). They admitted that they did not represent an employee majority but claimed that an election would not show the employees' free choice in view of alleged unfair labor practices on Sierra's part, namely coercion and an alleged refusal to bargain (R. 37, 8; 78–79, 88).[5]

[4] At the same time, the Locals appealed to customers not to do business with the Company (R. 37n. 3, 8–9; 182, 73–74, 176–177, 112–113).

[5] Charges of violation of Section 8(a)(5) had been filed and dismissed. Some 8(a)(1) charges were also filed; these were settled informally (R. 37n. 2, 38n. 4, 39n. 5, 9–10; 111, 131–132).

The Unions also stated at this meeting that they could not give up their demand for a union-security provision (R. 46; 83, 90–91, 97, 103).

On January 6, 1959, 3 months later, while the picketing still continued, the parties met again (R. 47, 7; 69–70, 71, 82). The Locals then stated that they were willing to accept a union security clause with a 30 instead of 30 day grace period (R. 47, 27; 73, 82–), and indicated a willingness to negotiate on the subject of union-security in general (R. 47, 27–28; 83, 92 3, 98–101).

2. The Locals call off their strike

On January 30, Business Agent Brown met one of Sierra's attorneys at the court house on the occasion of a Board application for a temporary restraining order against the Locals under Section 10(j) of the Act. (R. 47, 28; 90, 160–162). Brown told the Company's counsel that the Unions "were thinking" of some modification of their union-shop demand and were willing to settle the controversy by modifying their contractual demands to either a maintenance-of-membership provision or even an open shop. However, they would require discontinuance of the various company damage suits then pending and also the Board's pending Section 10(j) proceeding as the condition of such a settlement (R. 47, 28; 98–101, 162–163). The proposed "deal" was not accepted by the Company. The Locals continued picketing until February 6, 1959, when they stopped pursuant to a temporary restraining order obtained by the Board (R. 37, 8; 69). On the following day they sent a telegram to the Company advising

t that the strike was at an end and requesting reemployment of the strikers (R. 8; 181).

II. The Board's Conclusion and Order

Upon the foregoing facts, the Board found that respondents sought by their picketing to coerce Sierra into executing a union-shop contract with them while they represented only a minority of Sierra's employees and thereby violated Section 8(b)(2) of the Act (R. 47–48).[6]

Accordingly, the Board directed that the Locals cease and desist from attempting to cause Sierra, by picketing and other like or related conduct, to enter into a contract which requires, as a condition of employment, membership in either or both labor organizations, at a time when respondents do not represent a majority of Sierra's employees in an appropriate unit; and, affirmatively, to post appropriate notices (R. 48–50, 54).[7]

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[6] Board Member Fanning dissented (R. 50).

[7] The Board also found that the picketing was coercive of employees, in violation of Section 8(b)(1)(A) of the Act, and its order provided remedy accordingly. However, in view of the recent decision of the Supreme Court in *Drivers, Chauffeurs and Helpers Local Union No. 639, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America* v. *N.L.R.B.*, 362 U.S. 274, (Curtis Brothers, Inc.), holding that picketing for recognition by a minority union is not violative of Section 8(b)(1)(A) of the Act, the Board does not seek enforcement of such portions of its order as are based upon its finding of violation of that section. The portions of the Board's order so affected are 1 (a) and (b) and the first two full paragraphs of the notice set forth in the Appendix to the Board's order.

SUMMARY OF ARGUMENT

The Board reasonably found that the Locals lack majority status at the time they conducted the picketing. In addition, the evidence warrants the Board's finding that the purpose of respondent's picketing was to coerce the employer into executing a union-shop contract with them. Picketing by minority labor organizations for such a purpose constitutes an attempt to cause an employer to violate Section 8(a)(3) and therefore comes within the prohibition of Section 8(b)(2). The Supreme Court's *Curtis* doctrine, applicable only to Section 8(b)(1)(A), is not to the contrary. Accordingly the Board's conclusion of statutory violation was entirely sound.

ARGUMENT

The Board properly determined that respondents violated Section 8(b)(2) of the Act by picketing in order to force the Employer to execute a union shop contract with them at a time when they represented only a minority of the Company's employees

A. Substantial evidence supports the Board's finding that the Locals were not the employees' majority representative during the September-January picketing.

It was stipulated, and the Board duly found, that on September 24, 1958, when the Locals began picketing the Company premises, a majority of the employees had not designated Local 123 and 208 either jointly or separately as their collective bargaining representative (R. 38; 85). However, respondents contend that they had represented an employee majority on the previous July 21 but lost their status due to certain coercive actions of the Company and also to the latter's alleged statutory refusal to bar-

gni with them on that date. From this premise of majority status on July 21, they argue that, but for such company conduct, they would have continued to be the employees' duly designated representative and thus had a constructive majority during the September-January picketing period.[8] However, the facts do not support the Locals' premise that they were the employees' duly designated representatives on July 21, when Sierra refused to deal with them.

The initial demand for recognition was made on July 16 by Local 123, which admittedly lacked majority status then. Business Agent Brown had asked for recognition on behalf of Local 123 alone but got no answer from the employer (*supra*, p. 2). When Brown repeated his request on July 21, and again on July 22, he changed it, in his own words, to a "demand on behalf of Local 123, and Local 208 jointly" (R. 126, 185–186). The Company, thereupon refused to have any dealings with Brown and those he spoke for, and the Board accordingly found that "the refusal, if any, was a refusal to bargain with the Locals acting jointly" (R. 39, 20).

As of July 21, a majority of the employees had signed cards ostensibly designating Local 123 alone, but respondents contend that the employees actually meant to designate both Locals as joint representative, so that the demand for recognition of the two jointly was validly made. They sought to show that Sierra's employees were apprised from the beginning of the 1958 organizational drive that Locals 123 and

[8] See *N.L.R.B.* v. *Idaho Egg Producers, Inc.*, 229 F. 2d 821, 823 (C.A. 9).

208 together were seeking to represent them, and that by signing cards for Local 123 they were actually designating Locals 123 and 208 together. They also introduced evidence that at a meeting of 28 or 30 employees (less than a majority of all those in the unit) held on July 18, Brown and Chavez representing the two Locals told those present that thenceforth authorization cards signed for Local 123 would be construed as designating Local 208 as well (R. 122–123, 140–141, 155, 167, 169). We submit that on the showing made, the Board and its Trial Examiner properly found, contrary to respondents' claim, that on July 21 the Locals had not been jointly designated by an employee majority (R. 39, 17, 21).

As the Trial Examiner observed (R. 22):

> It is possible that earlier than July 21, 123 was *supported* by 208 in its organizational drive but if 208 were actually seeking joint representation with 123 in the earlier period of 123's efforts, obviously, I think, Sierra's employees would not have been solicited to sign only 123's authorization cards, and Brown's recognition demand of July 16 or 17 would have specifically spelled out the fact that joint recognition was being sought. Had this been done there would have been, and could have been, no occasion for his letter to Feldman dated July 22 [*supra,* p. 3].

As the record shows, it was not until the July 18 meeting, attended by less than a majority of the Company's employees, that Business Agent Brown of Local 123 told the employees that Local 123 had been unable to exert sufficient economic pressure on

the Company to obtain recognition, and accordingly arrangements had been made with Local 208 for joint organization of the Company's employees. The employees were also told at this meeting that cards signed for Local 123 would be construed as designating both locals. Brown obviously would not have been required to make these speeches had the employees been informed earlier that their designation of Local 123 was also a designation of Local 208, or that the ultimate request for bargaining would be a joint one. Since the number of Local 123 cards signed by July 21 was 33 out of the 60 employees in the unit, and 28 of those 33 cards were obtained before July 18, manifestly a majority of the employees had not designated Locals 123 and 208 jointly by that time. The subsequent events confirm the lack of majority status of the 2 locals. Thus, less than a majority of the employees supported the July 22 strike to obtain recognition of Locals 123 and 208 as bargaining representative. Furthermore, as the Board pointed out (R. 39):

> Indeed, after the commencement of the July strike the Teamsters [Local 208] themselves felt it necessary to distribute 208 cards for signature and Local 123 aided in circulating them among the employees [R. 147–148, 139–141, 142, 144–146, 153–154, 156–157, 158–160, 164].[9]

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[9] Since, as shown (p. 3), less than a majority of the employees supported the July 22 strike to obtain recognition of the two Locals, the strike to obtain recognition of the two Locals did not evidence any wish by a majority of the employees to ratify the change in their designations of Local 13 to designation of Locals 123 and 208 jointly.

Employees who are willing to join one union may be strongly against membership in a different union. Members of a Furniture Workers Local might not be willing to be counted among the Teamsters and vice versa. To permit unions, acting solely on their own volition, to bind their members as to what union should represent the employees would destroy employee rights under the Act. In these circumstances, we submit, the Board properly concluded (R. 39) that "as Locals 123 and 208 were not designated by a majority of Sierra's employees as the joint bargaining representative, Sierra's alleged refusal to bargain could not have undermined or contributed to the loss of majority. There was no actual majority on July 21 and, consequently, there could be constructive majority as of September 24." See *N.L.R.B.* v. *Scott and Scott,* 245 F. 2d 926, 928 (C.A. 9) where this Court recognized that an employer cannot be held to have refused to bargain with a union which is not the employees' majority representative.

B. Substantial evidence supports the Board's finding that respondents sought by their picketing to coerce Sierra into executing a union-shop contract with them

The Board, in concluding that respondents picketed during the September–January period in order to force Sierra to execute a union-shop contract, did so on the basis of the Trial Examiner's findings as to the underlying facts, which manifest the Locals' continued demand for a union-shop.[10]

[10] Although the Trial Examiner inferred from these facts that the Locals sought only recognition but not a union-shop contract, his conclusion is not binding on the Board since his special competence extended to the issue of credibility alone.

At the September 25 meeting of the parties, respondents coupled their rejection of a Company suggestion for an election to determine their eligibility to represent the employees with a declaration that they could not give up their demand for union-security. They then continued to picket the Company for more than 3 months without indication of any shift from that position which, as the Board noted (R. 48) "under such circumstances must be presumed to have persisted." It was not until the January 6 meeting that they first indicated that they would negotiate the matter and might modify their union security demands. Finally, Business Agent Brown, according to his own statement, told Company counsel at the January 30 meeting at the Courthouse that the Locals were merely "thinking" of some modification of their demand for the union-shop provision, and the testimony of the Company's attorney is uncontradicted that Brown told him that respondent would drop their union security demands only upon condition that the company discontinued its own damage suits against the Locals and that the Board's injunction proceeding be dropped.

The Board properly concluded, on this evidence, that the Locals, by their picketing sought to require the Company to execute a union shop contract with them. (R. 48).

Ultimate conclusions come within the province of the Board. *A.M. Andrews Co.* v. *N.L.R.B.*, 236 F. 2d 234,245 (C.A. 9); *N.L.R.B.* v. *Waterfront Employers of Washington*, 211 F. 2d 952–953, (C.A. 9); *N.L.R.B.* v. *Wichita Television Corp.*, 27 F. 2d 579 (C.A. 10).

C. Respondent's conduct was violative of the Act

1. *Section 8(b)(2) applies to picketing*

Congress provided by Section 8(b)(2) that it should be an unfair labor practice for a labor organization "to cause or attempt to cause an employer to discriminate in violation of Section 8(a)(3)."[11] "[A] literal reading of the section requires only a showing that the union caused or attempted to cause the employer to engage in conduct which, if committed, would violate Section 8(a)(3)." *N.L.R.B. v. International Union of Operating Engineers*, 237 F. 2d 670, 673 (C.A. 9), certiorari denied 353 U.S. 9, quoting *Radio Officers Union* v. *N.L.R.B.*, 347 U.S. 17, 53. For "cause" suggests no limitation as to the method used to bring about an end; it is a broad term. It means "To be the cause or occasion of; to effect as an agent; to bring about; to bring into existence; to make." Webster's International Dictionary, 2d ed. Strikes and picketing are the customary forms of union pressure or "causation" and it is therefore fairly to be assumed from the language of the section itself that Congress had such conduct in mind when it issued its broad interdict.

The legislative history serves to confirm the Congressional purpose to bar any and all union conduct

[11] Section 8(b)(2) of the Act makes it an unfair labor practice for a labor organization

> to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.

intended to result in employers discriminating against employees. The original Senate bill contemplated only abuse of union-shop agreements alone and made it unlawful for a labor organization "to persuade or attempt to persuade" an employer to discriminate against an employee whose membership had been terminated on some ground other than nonpayment of dues or initiation fees.[12] As finally enacted, however, the language of Section 8(b)(2) was "*expanded* [to read that it was unlawful for a labor organization to "cause or attempt to cause" an employer to discriminate] so as to prohibit *all attempts* by a labor organization or its agents to cause an employer to discriminate against an employee in violation of Section 8(a)(3)"[13] [Emphasis supplied.]

The Board and the courts have had no difficulty in concluding that Section 8(b)(2) applies to strike action designed to cause an employer to violate Section 8(a)(3). *N.L.R.B.* v. *Local Union No. 55,* 218 F. 2d 226, 232 (C.A. 10); *N.L.R.B.* v. *Denver Bldg. & Const. Co.,* 192 F. 2d 577, 578 (C.A. 10); *N.L.R.B.* v. *Steel Fabricators, Local 810,* 253 F. 2d 832, 833 (C.A. 2) *Operating Engineers Local No. 3* v. *N.L.R.B.,* 266 F. 2d 905, 907, 908 (App. D.C.), certiorari denied 36[illegible] U.S. 834; *N.L.R.B.* v. *United Association of Journeymen, etc. Local Un. No. 234,* 231 F. 2d 44[illegible] (C.A. 5) enforcing 112 NLRB 1385, 1386–137; *United Mine Workers* v. *N.L.R.B.,* 184 F. 2d

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H–R 3020, 80th Cong. 1st sess. pp. 81–82; 1 Legislative History of the Labor Management Relations Act, 1947 (Govt. Print. Off.) pp. 239–240.

House Conference Rept. No. 510, 80th Cong., 1st Sess. p. 44; 1 Leg. Hist. 548.

392, 393 (C.A.D.C.), certiorari denied, 340 U.S. 34. And see *N.L.R.B.* v. *International Association of Machinists, Lodge 942,* 263 F. 2d 796, 798 (C.A. 9)

"By Sec. 8(a)(3)(i) of the Act, the employe is forbidden to enter into a union shop contract wi a labor organization unless such labor organizatio is the representative of the employees as provide in Section 9(a) in the appropriate bargaining it covered by such agreement when made.'" *Local Union No. 55, supra,* 218 F. 2d at 232. It follows at where, as here, a labor organization cannot qualify as the employee representative under Section 9(a), picketing or strike action to compel the employe to enter into a union-security contract is an "attempt to cause" the employer "to discriminate" against its employees and therefore a violation of Section 8(b)(2). *Local Union No. 55, supra,* 218 F. 2d at 232; *Steel Fabricators, supra,* 253 F. 2d at 833; *Operating Engineers, supra,* 266 F. 2d at 907–908. And see *United Mine Workers, supra,* 184 F. 2d at 393; *Machinists, supra,* 263 at 798. Accordingly, the Board validly determined that the Locals' conduct was violative of the Act.

2. *The Curtis doctrine is not applicable to Section 8(b)(2) violation*

Respondents contended before the Board that their picketing for a union-shop could not be unlawful in view of the Supreme Court's decision in *N.L.R.B.* v. *Drivers Local 639 (Curtis Brothers)*, 362 U.S. 274.

In *Curtis* the Supreme Court passed solely upon the reach of Section 8(b)(1)(A), and not Section 8(b)(2), holding only that Section 8(b)(1)(A) had no applicability to picketing for recognition. Here,

the violation found by the Board was under Section 8(b)(2), by reason of picketing for a union shop agreement at a time when respondents did not represent a majority of the Company's employees. It is well settled, as we have shown above, that an employer may not enter into a union shop contract with a union which does not represent a majority, and the Act is specific in prohibiting the execution of such a contract (Section 8(a)(3)(i)). And it is no less well settled that a union which causes or attempts to cause an employer to violate Section 8(a)(3) thereby violates Section 8(b)(2).

CONCLUSION

Accordingly, it is respectfully submitted that a decree should be entered enforcing so much of the Board's order as is based upon respondents' violation of Section 8(b)(2) of the Act.

STUART ROTHMAN,
General Counsel,
DOMINICK L. MANOLI,
Associate General Counsel,
MARCEL MALLET-PREVOST,
Assistant General Counsel,
MELVIN J. WELLES,
WILLIAM J. AVRUTIS,
Attorneys,
National Labor Relations Board.

JANUARY 1961

APPENDIX

The relevant provisions of the National Labor lations Act, as amended (61 Stat. 136, 65 Stat. 6 29 U.S.C., Secs. 151, *et seq.*), are as follows:

Rights of Employees

Sec. 7. Employees shall have the right o self-organization, to form, join, or assist lab organizations, to bargain collectively throu representatives of their own choosing, and o engage in other concerted activities for e purpose of collective bargaining or other m tual aid or protection, and shall also have e right to refrain from any or all of such act ities except to the extent that such right m be affected by an agreement requiring memb ship in a labor organization as a condition f employment as authorized in section 8(a)(3

Unfair Labor Practices

Sec. 8. (a) It shall be an unfair labor pr tice for an employer—

* * * * *

(3) by discrimination in regard to hire r tenure of employment or any term or con tion of employment to encourage or discoura membership in any labor organization: *P vided,* That nothing in this Act, or in a other statute of the United States, shall p clude an employer from making an agreem t with a labor organization (not establish maintained, or assisted by any action defi d in section 8(a) of this Act as an unfair lab

practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later * * *

* * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: * * *

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * * *

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other em-

ployer to recognize or bargain with a lab organization as the representative of his e ployees unless such labor organization has be certified as the representative of such e ployees under the provisions of section 9; ((forcing or requiring any employer to recogni or bargain with a particular labor organizati as the representative of his employees if a other labor organization has been certified the representative of such employees under t provisions of section 9; (D) forcing or requ ing any employer to assign particular work employees in a particular labor organization in a particular trade, craft, or class rather th to employees in another labor organization in another trade, craft, or class, unless su employer is failing to conform to an order certification of the Board determining the ba gaining representative for employees perfor ing such work: *Provided,* That nothing co tained in this subsection (b) shall be constru to make unlawful a refusal by any person enter upon the premises of any employ (other than his own employer), if the e ployees of such employer are engaged in strike ratified or approved by a representati of such employees whom such employer is r quired to recognize under this Act;

* * * * *

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or s lected for the purposes of collective bargaini by the majority of the employees in a unit a propriate for such purposes, shall be the e clusive representatives of all the employees

such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

"LIMITATIONS

"SEC. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitatons or qualifications on that right.

* * * * *

U.S. GOVERNMENT PRINTING OFFICE: 1961